



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: 201010028
Release Date: 3/12/2010

Date: December 14, 2009

UIL: 501.03-08; 501.32-00; 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120
Tax Years:
All

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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UIL 501.03-08

501.32-00

501.33-00

N=Date of Incorporation
P=Name of Individual Organization was named after
Q=County, State
R=Name of Corresponding Secretary
S=Name of Historic Trail
T=Name of March
V=Name of Act
W=Name of Movement
Z=Name of Treasurer

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

Do you qualify for exemption under section 501(c)(3) of the Internal Revenue Code?

Facts

You are a corporation incorporated in Q on N. Article III of your Articles of Incorporation states that you shall preserve, memorialize, discuss, interpret, study and discover whatever may relate to the natural, civil, social, literary, cultural, educational and political history of the T and the events in the life of P and his descendants. Article III also indicates that your activities may include but are not limited to the following:

- Combining Resources and efforts for family members in promoting awareness of the contribution of P to the promulgation of the V of 1965.
- Restoring, revitalizing, and maintaining the 1965 appearance of the P Farm.
- Opening the P Farm to the public for natural, civil, social, literary, cultural, and historic purposes.
- Creating a supportive atmosphere for members who strive for excellence through educational achievements and economic advancements.
- Publishing and distributing newsletters and other materials to the public as well as the P family.
- Fostering continued research and publishing research papers documenting the history of the P family.
- Preserving the legacy of P.

Article IV of your Articles of Incorporation indicates that membership is only open to lineal descendants of P upon receipt of application and membership dues. Relatives, including spouses of descendants of P, are eligible for associate membership and can serve as committee members but are not eligible to hold any elected or appointed office, serve as a committee chairperson, or cast votes. Article V of the Articles of Incorporation states that your Board of Directors shall consist of all living first generation offspring of P. Article XIII of the Articles of Incorporation states officers shall serve for life as your Directors.

Article VI of your Bylaws discusses the election of officers and states that the election of officers shall be held every four years at your business meeting, during the family reunion. The location of business meetings is also documented in Article IX of the Bylaws which states that business meetings shall be held on the site of the family reunions or other familial gathering beginning in 2008. Article VI of the Bylaws goes on to describe various committees including the Executive Committee, Budget, Education, Membership, Marketing, Public Relations and Historical Task Force, Program Planning and Development, Election, and Bylaws Committee. The Executive Committee, has the general oversight of your activities and appoints committees not otherwise provided for. The Budget and Finance Committee, is responsible for soliciting cash and in-kind donations, grants, and other funds for the maintenance and preservation of The P Farm. The Education Committee, is responsible for establishing and administering a not-for-profit Education Foundation for the purpose of providing financial assistance to members who strive for excellence through educational achievements and economic advancements. Article VI, of the Bylaws describes the Membership Committee which is responsible for developing, implementing, and administering a membership plan. The Marketing, Public Relations and Historical Task Force, is responsible for the design, maintenance, and monitoring of your website and email server. The Task Force is also responsible for the publication of your newsletter which is used to disseminate information to your members and serve as a medium

for publication research on the P family. The purpose of the Program, Planning and Development Committee, is to plan, coordinate, and administer the family programs, reunion, special short term projects, and other events. You also have Ad Hoc Committees whose members must be lineal descendants of P. In terms of dissolution, the Articles of Incorporation contain the proper 501(c)(3) provision under Article XI and state that assets will be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. However, the dissolution provision in Article XV of the Bylaws states that in the event of dissolution all your assets shall be transferred to a Trust fund for the maintenance of the P Farm, Campsite 1 of the S.

You submitted a narrative description of your activities with your application. The narrative states that about 75% of your time during the first two years of operation will be spent on restoration of the Campsite 1 of the P Farm in Q. The campsite will be used to educate the public about the T that took place in 1965. Public use will makeup about 20% of your time each year. You will open a Visitor's Center to the public for historical studies on Thursdays and Saturdays of each week and during special events. An officer or board member will be present to conduct scheduled group tours of the home, the Visitor's Center, and Campsite 1. In addition, the property will be open to the public for recreational use from 10:00 a.m. to 4:00 p.m. Monday through Friday. Your next activity consists of T Re-enactments that will be conducted every five years and will serve as interactive educational experiences for the public. Board members and officers will be present at each re-enactment and will conduct scheduled tours. Camping will be allowed on the property as well as access to the Visitor's Center. The last activity explained in your narrative is publication of a newspaper that will take up approximately 5% of your time. You will publish and distribute a newsletter containing information about new exhibits and upcoming events to schools, merchants, and charitable organizations.

The narrative included with your application explains that you expect to fund the Restoration of the P Farm through governmental grants, foundation grants, and individual contributions. Your other activities will be funded by membership fees and individual contributions. The projected revenue provided on Form 1023 reflects that you expect to receive revenue from gifts, grants, and contributions, as well as membership fees.

You have a close connection with and are affiliated with the National Park Service under the Challenge Cost-Share Program in which the National Park Service works with communities, volunteer groups, historic property owners, universities, non-profit entities, and others to carry out projects that are important to the mission of the National Park Service. The activities under this agreement include, stabilizing and restoring the house on the P Farm to its 1965 appearance, restoring and rehabilitating the property for visitor use and enjoyment, and working with the National Park Service on visitor events and programs which interpret the Campsite 1 resources and W. The 2005 *Comprehensive Management and Environmental Impact Study* for S recognized the P Farm at Campsite 1 to be a significant site along the route of the S.

In a response to a letter sent to you asking for additional details about your activities and the property that the activities take place on you indicated that the property owners are the children of P and serve as uncompensated board members. In addition, there is no lease agreement for the use of the property.

Law

Section 501(c)(3) of the Internal Revenue Code provides, in part, for the exemption from Federal income tax organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the Regulations states that the words "private shareholder or individual" mean an individual having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the person who created it.

Revenue Ruling 67-5 states that a foundation controlled by the creator's family and operated to enable the creator and his family to engage in financial activities which are beneficial to them, but detrimental to the foundation was held to be operated for a substantial non-exempt purpose. It was also held that it served the private interests of the creator and his family, and therefore was not entitled to exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Revenue Ruling 68-307 holds that A nonprofit organization formed to help the National Park Service improve and expand its educational and scientific programs may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Revenue Ruling 72-147 states that An organization formed to provide low income housing to families but giving preference for housing to employees of a farm proprietorship operated by the individual who created and controls the organization does not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 80-302 states that An organization that (1) limits its membership to descendants of a particular family, (2) compiles family genealogical research data for use by its

members for reasons other than to conform to the religious precepts of the family's denomination, (3) presents the data to designated libraries, (4) publishes volumes of family history, and (5) promotes social activities among family members does not qualify for exemption under section 501(c)(3) of the Code;

In Better Business Bureau of Washington, D.C. Inc V United States, 326 US 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the claim for exemption regardless of the number or importance of truly exempt purposes.

In Texas Trade School v. Commissioner, 30 T.C. 642, affirmed 272 F. 2d 168 (5th Cir. 1959), the officers of the school leased property owned by them to the school and caused the school to erect improvements thereon which benefited them individually. The officers shared in the schools net earnings as the result of the payment to them of excessive and unreasonable rent for the physical plant leased by the school and as a result of the construction by the petitioner of buildings which became part of their real estate.

Operating for the benefit for private parties constitutes a substantial non-exempt purpose. Old Dominion Box Co. v United States 477 F 2d 340 (4th Cir.1973), cert.denied 413 U.S. 910 (1973).

Church of the Transfiguring Spirit v. Commissioner, 76 T.C. 1, 5(1981).-To operate exclusively for exempt purposes, an organization must serve a public rather than a private interest. Virtually all of the income of petitioner, a religious organization, was contributed by two of its ministers, virtually all of such income was paid as housing allowances for the benefit of those ministers, and virtually all of the control of petitioner was in those ministers. Consequently, an organization that operates for the benefit of private interests such as the creator or his family does not operate exclusively for exempt purposes.

In Wendy Parker Rehabilitation Foundation Inc. v. C.I.R., T.C. Memo 1986-348, the Tax Court found inurement to exist and denied exemption to the applicant organization. The court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. The officers and directors of the organization were all relatives of Wendy Parker, an individual receiving assistance from the organization. The Court found that the family was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family from the economic burden of providing medical care and rehabilitation care for their family member and, therefore, constituted inurement to the benefit of private individuals.

Application of Law

You are not described in Section 501(c)(3) of the Code because you fail both the organizational test and the operational test.

You are not as described in section 1.501(c)(3)-1(c)(1) of the Regulations because more than

an insubstantial part of your activities further the private interests of the P family.

You are not as described in section 1.501(c)(3)-1(c)(2) of the Regulations because your earnings inure to the P family.

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) because you are operated for the benefit of designated individuals, specifically the P family.

You are like the organization in Revenue Ruling 61-170. Although your actual activities are educational in nature, your funds are being used to restore and maintain property owned by your board members as well as build a new facility on property owned by your board members. The benefit to the property owners outweighs the public benefit from the educational programs.

Like the organizations in Revenue Ruling 67-5 and Revenue Ruling 72-147 you are controlled by and operated for private benefit. Your operations benefit the P family since the organization's funds are used to construct and improve property owned by the P family.

You are similar to the organization in Revenue Ruling 68-307 since you operate under an agreement with the National Park Service on visitor events and educational programs. However, critical distinguishing factors include the composition of your governing board, exclusively the P family as opposed to Park personnel; and the use of funds for privately owned property as opposed to property owned by the Park Service.

Like the organization in Revenue Ruling 80-302, you are a membership organization all the members of which are family and descendants of P. The Compilation, publication, preservation, and distribution of genealogical data has some educational value to the individual members. However, when these activities are primarily limited to one particular family the activities do not advance education to benefit the public interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Any benefit to the general public is merely incidental to the private benefit accruing to family members.

You are also like the organizations in Better Business Bureau of Washington DC and Old Dominion Box Co since your operations include substantial non-exempt purposes. Specifically, your non-exempt purposes include inurement to family members of P.

You are like the organization in *Texas Trade School v. Commissioner*. You plan to make significant repairs and improvements to the property owned by your Board members which will benefit the board members directly. The board members will therefore share in your net earnings.

Your activities are similar to those described in *Church of the Transfiguring Spirit v. Commissioner* in that your operations result in private benefit to your board members. As noted above your purpose includes restoring, revitalizing and maintaining private property owned by descendants of P and therefore your operations serve private interests.

Finally, you are like the organization in *Wendy Parker Rehabilitation Foundation Inc. v. C.I.R.* Your board members are all part of the same family and membership is only open to family members. Your funds are being used and will be used to restore and maintain property owned by the board members as well as erect a new facility on the property. Your board members are the owners of the property being used by you, and are allocating your funds to restore and maintain this property for which they would otherwise be financially responsible. You are therefore not operated exclusively for one or more exempt purposes since your net earnings inure to the benefit of private individuals.

Applicant's position

Your letter dated March 26, 2009, stated that the property owners declined the suggestion of transferring ownership of the portion of the property used to you or providing a signed and dated declaration adopted by the owners of the property indicating that if you cease to use the property, the owners will pay you back the fair market value of any improvements, restoration, or repairs that were done to the property.

Your letter dated April 13, 2009 once again declined our recommendations and you also indicated that you have not amended your Articles of Incorporation or considered expanding your Board of Directors.

Service's response to applicant's position

Because your Board members have refused to transfer ownership of the property or to assume financial responsibility for all the improvements to the property your operations result in inurement which is specifically prohibited. Further since amendments have not been made to your Articles of Incorporation you do not meet the organizational test requirements.

Conclusion

The facts show that you are not organized and operated for purposes described in Section 501(c)(3) of the Code. Specifically, you fail the organizational test because your purposes as stated in your Articles of Incorporation are broader than permitted in the Code. You fail the operational test because your earnings inure to the benefit of your members.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Internal Revenue Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Enclosure: Publication 892

Robert Choi
Director, Exempt Organizations
Rulings & Agreements